

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4981 OF 2017

Dr. Sharmila Avinash Jadhav

and Ors.

....Petitioners

V/s.

State of Maharashtra and Ors.

....Respondents

\* \* \* \* \*

Mr. Chaitanya Pendse a/w. Mr. Sushmit Phatale, i/by. Mr. Hassan U. Khan, Advocate for the petitioners.

Mrs. A.S. Pai, Additional Public Prosecutor for respondent no.1, State.

Mr. Asutosh Shukla, Advocate for respondent no.2.

**CORAM :-**

**R.M.SAVANT, &**

**SANDEEP K. SHINDE, JJ.**

**DATE :-**

**9TH FEBRUARY, 2018.**

**P.C. :-**

1. The above Writ Petition has been filed for quashing of the proceedings being C.C. No. 133/PW/2014 pending on the file of the Metropolitan Magistrate, 66<sup>th</sup> Court, Andheri (East), Mumbai. The said proceedings

have arisen out of the FIR being C.R. No. 489 of 2010 for the offences punishable under Sections 465, 467, 468, 471, 420 and 34 of the Indian Penal Code. Registration of the FIR and the said proceedings have arisen out of the dispute, that the petitioners and the First Informant, Alka and her sister, Shailaja had in respect of the property belonging to their father and the self-acquired property of their mother. The petitioners and the First Informant and Shailaja are sisters and were parties before this Court in Testamentary Suit No. 237 of 2015 filed for probate in respect of the Will of the mother and Testamentary Suit No. 51 of 2017 filed for probate of the Will of the father. In the said Testamentary Suits, the parties arrived at a compromise which was reduced into writing by way of Consent Terms dated 3<sup>rd</sup> November, 2017 and which was tendered before the Learned Single Judge of this Court, Hon'ble S.C. Gupte, J on the same day i.e. 3<sup>rd</sup> November, 2017. The said Testamentary Suits came to be disposed of in terms of the said Consent Terms. The said Consent Terms have been signed by the parties and their

respective advocates. The said consent terms set out the manner in which the properties of the father of the petitioners and the First Informant and Shailaja and the mother of the petitioner and the First Informant, Alka and Shailaja are distributed. In the context of the present petition, Clause-16 of the consent terms is material and is reproduced hereinunder :-

“16. Both Alka and Shailaja hereby undertake to withdraw all allegations, complaints filed with Police department and in all other Government authorities forthwith and undertake to give consents for quashing the FIR and criminal complaints filed against Sharmila and Pratibha and executors of the Will left by Late Vithalrao and Late Smt. Sushila Hande. Alka and Shailaja further undertake not to file any complaint or proceedings against Sharmila, Pratibha, their family members and executors hereafter in respect of properties left by the parents and further undertake not to raise any objection or complain to any authority against Sharmila and her family members in respect of Powai Hospital, licenses or working of hospital including construction of the building and redevelopment if undertaken by Sharmila or any person authorized by Sharmila in future and shall not claim any right or create obstacles in any manner. Sharmila and Pratibha also undertake to withdraw all their complaints filed by them

against Alka and her family members and Shailaja forthwith and shall not make any allegations against them in future regarding the properties of the parents and shall not make any allegations which will cause social, mental and economical prejudice to Alka and her family members.”

2. The First Informant i.e. respondent no.2A has also filed an Affidavit dated 9<sup>th</sup> December, 2017 in the context of the relief sought in the above petition, para-3 of the said Affidavit assumes importance and is reproduced hereinunder :

“3. I say that after detailed discussion and interventions from mediators, the entire disputes between the Petitioners and myself and other sisters are completely resolved in view of the consent terms dated 3<sup>rd</sup> November, 2017 filed in Testamentary Suits No. 237 of 2015 and 51 of 2017 and the properties held by our parents are distributed among the sisters and other family members as per mutual agreement and consent of all parties. I say that I have no grievance against the Petitioners and I hereby withdraw all the allegations and complaints made by me against the Petitioners, either with the Police authorities or with the Government or semi Government authorities, in view of the amicable settlement arrived at between the Petitioners and other sisters. I say that I have no objection if the above petition is allowed and FIR lodged by me is quashed along with

subsequent proceedings pursuant to the FIR which resulted in criminal cases.”

3. A reading of the consent terms dated 3<sup>rd</sup> November, 2017 and the Affidavit filed by respondent no.2 in the instant petition dated 9<sup>th</sup> December, 2017 makes it clear that the parties have settled their dispute in respect of the properties and in view thereof, the First Informant i.e. respondent no.2A does not desire to proceed with the proceedings which are pending in the trial Court. Respondent no.2A is personally present in the Court. She is identified by Learned Counsel, Mr. Ashutosh Shukla. She is identified by her Pancard bearing No.ABVPS5830L. When put in the box and queried, she accepts the factum of the parties filing the consent terms before the Learned Single Judge in the Testamentary Suit. She further states that, the affidavit tendered by the Learned Counsel today is hers and that she has read and understood the said Affidavit. Petitioner no.1, Dr. Sharmila Jadhav is also present in the Court. She is identified by Learned Counsel, Mr. Pendse. She is

also identified by her Aadhar Card bearing no. 99589 9649 6610. When put in the box and queried, she accepts the factum of the Consent Terms being filed before the Learned Single Judge in the Testamentary Suits. The petitioner no.2, Pratibha Jayant Adak is also personally present in Court. She is identified by the Learned Counsel Mr. Pendse. She is also identified by her Aadhar Card bearing no. 6282 8303 0000. When put in the box and queried, she states likewise. The fourth sister, Shailaja is not present in the Court. However, the Learned Counsel Mr. Shukla states that, she has also signed the Consent Terms and that the settlement is acceptable to her. In the light of the Consent Terms, the Affidavit of the respondent no.2 and the statements made by the respondent no.2 and the petitioners when put in the box and queried, the same unequivocally lead to the conclusion that, no useful purpose would be served by keeping the proceedings pending.

4. Having regard to the judgment of the Apex Court in the case of **Narinder Singh v. State of**

**Punjab reported in (2014) 6 SCC 466**, there is no impediment in quashing the proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab reported in (2012) 10 SCC 303** would also lead to the same conclusion. The petition is accordingly allowed and made absolute in terms of prayer clause (a).

5. Since the machinery of this Court, is being utilised for quashing of the criminal proceedings, the petitioners to pay cost of Rs.10,000/- each totaling to Rs.30,000/- with the Tata Memorial Centre (Tata Memorial Hospital) within a period of six weeks from date. Receipt to be obtained and to be filed in the Registry.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)